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No. 82-197

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

JOSEPH A. MARESSA,,
Petitioner,
vs.

NEW JERSEY MONTHLY, and HENDRIX F. C. NIEMANN and CHRISTOPHER LEACH and MICHAEL ARON and TERESA CARPENTER and HARVEY FISHER and ROBERT NARUS, jointly, severally and in the alternative,
Respondents

BRIEF IN OPPOSITION TO A PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

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QUESTIONS PRESENTED

1. As a matter of constitutional law, does *Herbert v. Lando*, 441 U.S. 153 (1979), prohibit a state from enacting an absolute privilege by statute against compelled disclosure of a media defendant's news sources and editorial processes in a civil action for defamation?

2. Does the enactment of an absolute statutory privilege against disclosure of news sources and editorial processes by media defendants abolish the right of public officials and public figures to bring civil actions for defamation; and does such a privilege deny equal protection of due process of law to such plaintiffs?

3. Is the judgment appealed from in this case a "final judgment" which can be reviewed by writ of certiorari by the United States Supreme Court pursuant to 28 U.S.C. Section 1257(3)?

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STATEMENT OF THE CASE

This civil libel action arises out of an article published in the October 1979 issue of New Jersey Monthly magazine, then published by N.J.M. Associates. The article, entitled "Rating the Legislature", was essentially an editorial article of opinion whereby the magazine, after research and interviews, evaluated various legislators from the 1978-79 New Jersey Legislature. The magazine picked ten "Best" and ten "Worst" legislators, and provided short pieces about each legislator explaining the reasons for each categorization.

One of the legislators rated as being among the "Worst" was plaintiff, here petitioner, Joseph Maressa, then a senator from the Fourth District. Petitioner responded in December 1979 by filing a defamation complaint against the above-named defendants, here respondents, alleging that the entire article, insofar as it concerned him, was false and libelous. He further alleged that respondents made no inquiry or investigations concerning the allegations published in the article.

The course of this litigation was diverted for some two years due to petitioner's attempts to gain access to respondents' confidential sources, notes, and editorial processes and documents. Respondents maintained that these items were privileged under the New Jersey Shield law, N.J.S.A. 2A:84A-21 (Pet. at 4), as well as the New Jersey and United States Constitutions, but nonetheless permitted depositions of the three authors of the article, namely, Teresa Carpenter, Harvey Fisher, and Robert Narus.

Petitioner originally obtained from the Superior Court, Law Division, Camden County, an order requiring respondents to produce the discovery materials requested. (Pet. App. 33a) Respondents sought and were granted an interlocutory appeal of this ruling to the Appellate Division; the Supreme Court directly certified the matter. On May 6, 1982, the Supreme Court of New Jersey ruled, in pertinent part, that the New Jersey Shield Law granted an absolute privilege to respondents

not to disclose their confidential sources, editorial documents and editorial processes, in the absence of a conflicting constitutional interest. *Maressa v. New Jersey Monthly*, 89 N.J. 176 (1982). (Pet. App. 1a) The New Jersey Supreme Court explained that defamation plaintiffs had no countervailing constitutional right in their reputations which had to be balanced with the Shield Law, citing *Paul v. Davis*, 424 U.S. 639, 712 (1976). *Maressa, supra*, 89 N.J. at 191 (Pet. App. at 11a-12a). The court suggested that most of the case could be eliminated by summary judgment. *Id.* at 196-98 (Pet. App. at 17a-18a).

After this decision, but before the present petition for certiorari was filed with this Court, respondents brought a motion for summary judgment in the Supreior Court, Law Division, Camden County (Resp. App. 1a), arguing that most of the statements of which petitioner complained were constitutionally-protected opinions under *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339-40 (1974), and that the factual statements concerning plaintiff were accurate, thus precluding a finding of actual malice. This motion is still pending as of the date this reply brief is being filed. If granted, it will completely dispose of this action on the merits.

SUMMARY OF ARGUMENT

1. The present petition sets forth no substantial federal question which would allow this Court to grant a writ of *certiorari*. The decision of the New Jersey Supreme Court is wholly in accord with settled case law of this Court and is based principally upon state law.

2. The construction given by the New Jersey Supreme Court to the New Jersey Shield Law (N.J.S.A. 2A:84A-21 *et seq.*) does not deny petitioner due process or equal protection of the laws, as he has no constitutional right to his reputation and has asserted no violation of any other constitutionally protected interest to which due process or equal protection guarantees should attach. Petitioner's "equal protection" argument was not raised at any point in the state court proceedings below.

3. The decision below is interlocutory in nature and therefore is not "final" for purposes of review in this Court pursuant to 28 U.S.C. Section 1257(3).

4. The petition does not meet the requirements of Rule 21 of the Rules of the Supreme Court.

REASONS FOR DENYING THE WRIT

I. No Substantial Federal Question Is Presented By The New Jersey Supreme Court's Interpretation Of The New Jersey Shield Law, N.J.S.A. 2A:84A-21 et seq.

Petitioner appears to suggest that *Herbert v. Lando*, 441 U.S. 153 (1979), as a matter of constitutional law, prohibits a state from enacting any shield law whatsoever, especially one which protects a media defendant's editorial processes from compelled disclosure in civil defamation actions Pet. at i, 15, 17). (The confidentiality of news sources was not at issue in the *Herbert v. Lando* decision.)

Herbert v. Lando holds only that the First Amendment does not compel an absolute privilege to withhold editorial processes. *Herbert v. Lando, supra,* 441 U.S. at 175; *Maressa v. New Jersey Monthly,* 89 N.J. 176, 189 (1982) (Pet. App. at 10a). The entirety of Justice White's opinion sets forth the policy reasons why, solely as a matter of federal law, this Court chose not to create such a privilege. But the *holding* of *Herbert v. Lando* was not made binding on the states as a matter of federal constitutional law. As the Third Circuit Court of Appeals recognized in *Steaks Unlimited v. Deaner,* 623 F.2d 264 (3d Cir. 1980):

> "In *Herbert,* the Supreme Court held that the First Amendment did not *require* the federal and state courts to adopt an absolute discovery privilege from material implicating the "editorial process' — that is, for material that directly reveals the defendants' subjective state of mind. ...The Court did not hold, however, that it is unconstitutional for the states to establish a privilege against state-of-mind discovery. The Constitution has never been construed as requiring the states to provide persons or organizations who have been defamed with a remedy for their injuries. It follows that to the extent a state chooses to authorize a cause of action for defamation, it may also limit the plaintiff's ability to prove his claim in order to promote other social purposes." *Id.* at 275 n. 74. (citations omitted).

None of the statements from *Herbert* quoted by petitioner (Pet. at 15, 17) contradict this point. On the contrary, petitioner would have this Court ignore its clear pronouncement in *Branzburg v. Hayes*, 408 U.S. 665 (1972):

> "It goes without saying, of course, that we are powerless to prevent our state courts from responding in their own way and construing their own constitutions so as to recognize a newsman's privilege, either qualified or absolute." *Id.* at 706; quoted in *Maressa, supra*, 89 N.J. at 189.

Petitioner has not attempted to assert that his interest in his reputation amounts to a constitutionally-protected liberty or property interest. Indeed, he cannot do so, in light of *Paul v. Davis*, 424 U.S. 693 (1976). *Herbert v. Lando* does recognize that reputation is a "basic concern", 441 U.S. at 169. But it is not a concern of constitutional dimensions, and hence does not authorize this Court to overrule the New Jersey Supreme Court's construction of its state-created Shield Law. *Paul v. Davis, supra*, 424 U.S. at 712. As one Federal court has stated:

> "Simply put, while an individual's interest in his reputation is a basic concern, *Herbert v. Lando, supra*,... Its reflection in the laws of defamation is solely a matter of State law." *Mazzella v. Philadelphia Newspapers*, 479 F. Supp. 523, 527 (E.D.N.Y. 1979), citing *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 342 (1974).

The *Mazzella* court, citing *Paul v. Davis, supra*, noted that since the defamation cause of action is state-created and enforced, the states can limit, modify or abolish it through the operation of testimonial privileges such as Shield Laws, absent any claim of constitutional deprivation. *Mazzella, supra*, 479 F. Supp. at 527. The foregoing language was cited by the New Jersey Supreme Court in holding that such limitations on the tort of defamation raise no constitutional issues and do not

constitute arbitrary or irrational state action. *Maressa, supra,* 89 N.J. at 190, 191* (Pet. App. at 12a-13a).

It is clear from the language of this Court's own opinions in *Branzburg v. Hayes, supra, Paul v. Davis, supra,* and *Herbert v. Lando, supra,* that while the First Amendment to the United States Constitution does not require either the Federal Government or State Governments to adopt an editorial process privilege or an absolute newsperson's privilege, there is no constitutional bar to a state adopting such a privilege as a matter of state statutory or constitutional law. State law controls the result in this case. *Zacchini v. Scripps-Howard Broadcasting Co.*, 433 U.S. 562, 566 (1977). Thus, there is no reason for this Court to review a case in which, essentially, it will only be rendering an advisory opinion. *Paschall v. Christie-Stewart, Inc.*, 414 U.S. 100, 101-102 (1973).

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* In *Downing v. Monitor Publishing Company, Inc.*, 120 N.H. 383, 415 A.2d 683 (1980), cited by petitioner, the New Hampshire Court refused to adopt a "common law" newsperson's privilege. The decision is irrelevant to the within case for the reasons petitioner readily admits: that case arose in another jurisdiction, in which no statutory shield law was in effect. It is thus both factually and legally inapposite to the issues presented in the present petition.

II. The New Jersey Shield Law Does Not Violate Any Due Process Rights Of Libel Plaintiffs Nor Does It Abolish Defamation Claims By Public Officials Or Otherwise Violate The Equal Protection Clause.

At the outset, it must be noted that none of the arguments raised in petitioner's second Question were raised or preserved by petitioner in any of the state courts below. Petitioner's due process claim (Pet. at i, 16) was first raised before the New Jersey Supreme Court, which rejected it. *Maressa, supra,* 89 N.J. at 193 (Pet. App. at 14a-15a). Petitioner's "equal protection" argument (Pet. at 16) is being raised for the first time in his petition to this Court. He never raised or preserved this issue in any of the state courts, hence none of the Courts below considered it. Since the United States Supreme Court does not decide issues raised for the first time in a petition for certiorari, *Tacon v. Arizona,* 410 U.S. 351, 352 (1973); *Cardinale v. Louisiana,* 394 U.S. 437, 438 (1969), petitioner's "equal protection" argument should be rejected on this ground alone.

Petitioner's "due process" argument is without merit since petitioner has not alleged the existence of any constitutionally-protected liberty or property interest, as is required for a federal question to exist. As has already been pointed out, *Paul v. Davis, supra* held that petitioner's interest in his reputation has no constitutional foundation and does not constitute "liberty" or "property" under the Fourteenth Amendment. The only interest asserted by petitioner is a matter of state tort law. That the states can therefore limit this interest as they see fit was recognized by this Court in *Branzburg v. Hayes, supra, Paul v. Davis, supra,* and *Martinez v. California,* 444 U.S. 277, 282 (1980). The decision of the New Jersey Supreme Court is wholly in accord with these precedents. *Maressa, supra,* 89 N.J. at 190-191 (Pet. App. at 12a-13a). As this aspect of petitioner's argument has already been discussed in Section I, *supra,* it need not be repeated here.

Petitioner also alleges, without any factual or legal support whatsoever, that the New Jersey Shield Law foreclosures public official and public figure plaintiffs from ever maintaining a

libel suit against a media defendant (Pet. at 15, 16). Petitioner asserts, again without any support, that the "discrimination" against public official and public figure plaintiffs somehow constitutes a denial of equal protection of the laws (Pet. at 16-17).

Petitioner greatly misstates the import of the New Jersey Supreme Court decision in this case. While the New Jersey Supreme Court decision, by necessity, discusses the Shield Law privilege with public official plaintiffs such as petitioner in mind, there is no limiting language in either the statute or the *Maressa* decision which confines its holding to public official and public figure plaintiffs only. Private figure plaintiffs would also be foreclosed from inquiring into a media defendant's confidential sources and editorial processes.*

Petitioner at no point sets forth the legal basis for his "equal protection" claim (Pet. at 16-17). He does not suggest, or attempt to demonstrate, that "public figure" libel plaintiffs are a suspect classification, or that the New Jersey Shield Law, as construed, violates some fundamental right implicitly or explicitly protected under the federal Constitution. *San Antonio School District v. Rodriguez,* 411 U.S. 1, 17 (1973), *rehearing denied,* 411 U.S. 959 (1973); *Shapiro v. Thompson,* 394 U.S. 618, 630 (1969). The class of public official and public figure libel plaintiffs is not an "inherently suspect" distinction such as race, religion, or alienage, *Friedman v. Rogers,* 440 U.S. 1, 17 (1979), *rehearing denied,* 441 U.S. 917 (1979); *New Orleans v. Dukes,* 427 U.S. 297, 303 (1976). And petitioner's interest in his reputation does not amount to a right of constitutional dimensions recognized by state or federal law, or rise to the level of

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* Private figure libel plaintiffs, moreover, have no more constitutional rights in their reputations than public figures. Though this Court did not reach the issue in its decision, it is clear that the plaintiff in *Paul v. Davis, supra* was a private figure. *Cf. Wolston v. Reader's Digest Ass'n., Inc.,* 443 U.S. 157 (1979).

fundamental rights such as marriage, procreation, contraception, family relationships, or education. *Paul v. Davis, supra,* 424 U.S. at 712-13. Hence this contention is without merit.*

Nor is petitioner (or any other public official/figure plaintiffs), foreclosed from proving actual malice in a defamation action against a media defendant as a result of the privileges conferred by the New Jersey Shield Law. As Justice Pashman was careful to point out in his majority opinion, a public figure may be able to establish actual malice by inferential evidence. In cases where a defamatory report was published, and reliance is claimed solely on confidential sources, trial courts must consider whether the circumstances of the publication warrants submission of the actual malice issue to the jury. In such cases, a sufficient inference of actual malice can arise where a false report is published solely in reliance on confidential sources and: (1) the content of the report is such as to be defamatory as a matter of law; (2) the defendant knew or should have known of some reasonable means to verify accuracy; and (3) the failure to verify rises to the level of the gross violation of the standards of responsible journalism. When such recklessness approaches the level of publishing a knowing falsehood, the issue should be submitted to the jury. Justice Pashman notes that in such cases, the defendant may decide to voluntarily reveal its sources in order to rebut an inferential showing of actual malice. *Maressa, supra,* 89 N.J. at 199-200 (Pet. App. at 20a-21a). Where the

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* This "equal protection" argument may be based on petitioner's assumption that a private figure plaintiff, not having to prove actual malice under the *New York Times* standard, might be able to prevail in a defamation action in New Jersey merely upon a showing that the media defendant acted negligently or with gross negligence. This assumption has no factual basis. The standard of conduct to be applied to a media defendant in a private figure defamation action has never been decided by the New Jersey Courts, pursuant to the dictates of *Gertz v. Robert Welch, Inc., supra.* To date, the New Jersey Courts have explicitly avoided any decision on this issue. One New Jersey Appellate Division opinion suggests that a stricter-than-negligence standard should apply in defamation actions brought by private figure plaintiffs, noting that this Court's opinion in *Gertz v. Robert Welch, Inc., supra,* does not compel the New Jersey courts to adopt a negligence standard. *Barbetta Agency, Inc. v. Evening News Publishing Company,* 135 N.J. Super 214, 221-23 (App. Div. 1975). The impact of the Shield Law on private figure plaintiffs is not before this Court in this action.

sources are not confidential — i.e. the sources are identified in the publication — there is, of course, no problem. Their disclosure compromises no confidential relationships of a media defendant. *Maressa,* 89 N.J. at 194-195 (Pet. App. at 15a-16a).

Accordingly, petitioner's asserted "due process" and "equal protection" arguments are far too speculative and hypothetical to rise to the level of a "substantial federal question" within the language of 28 U.S.C. Section 1257(3). At most, petitioner can only assert that he himself may be unable to prove actual malice without disclosure of respondent's confidential sources and editorial processes. That his case is weak as opposed to other potential libel plaintiffs is not the kind of "special and important reasons" required by this Court for *certiorari* jurisdiction to exist. *Sup. Ct. R.* 17.

At most, Petitioner's "due process" and "equal protection" claims are grounded on the infringement of a "constitutional right" which never existed. At no time did Petitioner ever have any state "constitutional right" to bring a defamation action under Article I, Paragraph 6 of the 1947 New Jersey Constitution* (Pet. at 14, 16); nor has such a right ever been afforded to any other New Jersey libel plaintiff, public or private. This claim was explicitly considered and rejected by the New Jersey Supreme Court in its majority opinion. *Maressa, supra,* 89 N.J. at 192-193** (Pet. App. at 13a-14a).

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* *N.J. Const.,* (1947), Art. I, Section VI (Pet. at 3).

** To the contrary, Justice Pashman recognized that the New Jersey Constitution grants the press wide freedom because of the belief that the public interest is served by an informed citizenry. *Maressa, supra,* 89 N.J. at 200 (Pet. App. at 22a). However, the Court did not find it necessary to determine whether the New Jersey Constitution, by itself, granted an absolute evidentiary privilege against forced disclosure of editorial processes, holding that the language of the statute was a sufficient basis for its holding that the privilege was absolute. *Id.* at 189. There is now no question that state constitutions can provide more rights to citizens than the United States Constitution. *Pruneyard Shopping Center v. Robbins,* 447 U.S. 74, 81 (1980). Of course, the issue of whether the New Jersey Constitution independently provides such a privilege is not properly before this Court.

This argument appears to be an attempt to persuade this Court to act as a "super-appeals court", with power to overrule the New Jersey Supreme Court even in the absence of the existence of any substantial federal question. It is not the function of this Court to construe a state statute or constitutional provision contrary to that construction given it by that state's highest court. * *Landmark Communications, Inc. v. Virginia,* 435 U.S. 829, 837 n.9 (1978); *Eastlake v. Forrest City Enterprises,* 426 U.S. 668, 674 n.9 (1976); *Memorial Hospital v. Maricopa County,* 415 U.S. 250, 256 (1974); *O'Brien v. Skinner,* 414 U.S. 524, 531 (1974). Nor is any federal question presented by a claim that the New Jersey Supreme Court exceeded its powers under, or misconstrued, the New Jersey Constitution. *Schuylkill Trust Company v. Pennsylvania,* 302 U.S. 506, 512 (1938).

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* A state constitutional provision is a "statute" for purposes of review under 28 U.S.C. Section 1257(3). *Pruneyard Shopping Center v. Robbins, supra,* 447 U.S. at 79.

III. The Judgment Which Petitioner Seeks To Have Reviewed In This Court is Not A Final Judgment Under 28 U.S.C. 1257(3).

This is an interlocutory appeal on a discovery issue, concerning the construction to be given to a state evidentiary privilege statute. The decision of the New Jersey Supreme Court contemplates further substantive proceedings in the lower courts, including the possibility of a full trial, which will neither preclude nor require a decision on the asserted federal issue presented in the petition. These further state proceedings could have a substantial effect on the federal constitutional issues raised in the petition for certiorari. *Minnick v. California Department of Corrections*, 452 U.S. 105, 120-23 (1981).

The party seeking review by writ of certiorari must demonstrate that this Court has jurisdiction to grant the writ and review the case. *Department of Mental Hygiene v. Kirchner*, 380 U.S. 194, 197 (1965). It is therefore the duty of petitioner to show that the judgment for which review is sought is a "final judgment" within the purview of 28 U.S.C. Section 1257(3). This he cannot do.

The United States Supreme Court takes jurisdiction only over cases in which final judgments have been rendered by the State Court of last resort. *New York Times Company v. Jascalevich*, 439 U.S. 1317 (1980); *United States v. MacDonald*, 435 U.S. 850, 853 (1978); *Southern Pacific Company v. Gileo*, 351 U.S. 493, 496 (1956). This prevents the Court from rendering advisory opinions on federal questions which may be unnecessary to the complete disposal of a case in the state courts. *Pope v. Atlantic C.L.R. Company*, 345 U.S. 379, 381-82 (1953). Accordingly, piecemeal review of cases is avoided and federal court intrusion into state affairs is kept to a minimum. *North Dakota State Board of Pharmacy v. Snyder's Drug Stores, Inc.*, 414 U.S. 156, 159 (1973); *Radio Station W.O.W., Inc. v. Johnson*, 326 U.S. 120, 124 (1945). A decision is final when nothing of substance remains to be decided by the trial court. *Construction General Laborer's Union v. Curry*, 371 U.S. 542 (1963).

It is recognized that this rule is given a practical rather than a technical construction, and *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975), lists four categories of cases where a state court decision would be deemed "final" for purposes of United States Supreme Court review even though the state court decision would not meet the traditional definition of "finality". These categories are:

(a) cases which are over for all practical purposes because the federal issue controls the outcome or preordains it;

(b) cases in which the federal issue will eventually require a decision regardless of the outcome of further state proceedings;

(c) cases in which later review of the federal issue will be precluded regardless of the outcome of the state proceedings;

(d) cases in which the federal issue may be rendered moot if the appellant prevails on the merits in the state court, but Supreme Court review of that issue would preclude any further state proceedings, and a delay in Supreme Court review would seriously erode a federal policy. *Id.* at 479-83.

It can be readily demonstrated that the present petition fits within none of these four categories. As to the first, there is no dispute that *Herbert v. Lando, supra,* does not control the construction to be given to the New Jersey Shield Law. As to the second category, should respondents prevail in their pending summary judgment motion against petitioner, there would be no need to decide any of the alleged federal issues.* As to the remaining categories, no important federal issue has even been

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* Alternatively, if petitioner's cause of action survives, he may attempt to establish actual malice through the inferential process outlined in Justice Pashman's majority opinion in the New Jersey Supreme Court, discussed *supra*, regardless of the existence of the New Jersey Shield Law and the construction given it by the New Jersey Supreme Court.

presented, let alone one which would have to be decided regardless of the later state court proceedings to come, or which would preclude further state court proceedings.

Accordingly, since the decision of the New Jersey Supreme Court in this case cannot be deemed a "final judgment" within the purview of 28 U.S.C. Section 1257(3), the Petition for Certiorari should be denied on this ground alone.

IV. The Petition Filed in This Case Does Not Comply With Rule 21 of the Rules of the Supreme Court.

The Petition filed in this case violates *Supreme Court Rule* 21 in two respects. *First,* the petition fails to indicate, as required by *Sup. Ct. R.* 21.1(h), the stage in the proceedings in the state trial and appellate courts at which petitioner's asserted federal claims were raised and disposed of, with accompanying citations to the record below. *Second,* the statement of Questions Presented, the Statement of the Case, and the Argument do not clearly and accurately set forth the grounds upon which this Court's jurisdiction supposedly exists, or even the precise nature of the federal questions to be decided by this court, contrary to *Sup. Ct. R.* 21.5. For purposes of this Reply Brief, respondents have found it necessary to restate the *Questions Presented* to reflect their understanding of the issues actually addressed by the Petition. These defects alone constitute sufficient grounds for this Court to deny the requested writ. *Id.*

CONCLUSION

The decision of the New Jersey Supreme Court in this case presents no important questions of federal law which are unsettled by this court or which are in conflict with applicable decisions of this Court. The federal issues raised by petitioner are not yet ripe for review, and indeed, many of them were not presented or preserved in the state courts prior to the filing of this petition. Petitioner's claims concerning construction of the New Jersey Shield Law must be rejected, as this court has no power to overrule a state court's construction of its own laws. Nor does this case otherwise call for the supervision of the Supreme Court of the United States. For the foregoing reasons, it is respectfully submitted that this Petition for Writ of Certiorari to the Supreme Court of New Jersey should be denied.

Respectfully submitted,

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APPENDIX

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SUPERIOR COURT
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LAW DIVISION
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DOCKET NO. L-18536-79

CIVIL ACTION
NOTICE OF MOTION

Plaintiff

JOSEPH A. MARESSA

vs.

Defendant

NEW JERSEY MONTHLY and HENDRIX, F.C. NIEMANN and CHRISTOPHER LEACH and MICHAEL ARON and TERESA CARPENTER and HARVEY FISHER and ROBERT NARUS, jointly severally, and in the alternative

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Berlin, New Jersey 08009

PLEASE TAKE NOTICE that on Friday, July 2, 1982, at 9:00 a.m. in the forenoon, or as soon thereafter as counsel may

be heard, the undersigned attorneys for the defendants New Jersey Monthly, Hendrix F.C. Niemann, Christopher Leach, Michael Aron, Teresa Carpenter, Harvey Fisher and Robert Narus, will make application to the Superior Court, Law Division, Camden County, at the Courthouse, Camden, New Jersey, for a Summary Judgment in favor of all of the defendants upon all claims made against the defendants by plaintiff in this action. Annexed hereto is a Brief and Appendix in support of this Motion.

BERNER, WALLACK & HILL
Attorneys for Defendants

BY: _____